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Current Topics.

Sir William Holdsworth, O.M., K.C.

GENERATIONS of Oxford undergraduates cherish their memories of the late Sir WILLIAM HOLDSWORTH, O.M., K.C., D.C.L., Vinerian Professor of English Law, who died on 2nd January. His pupils knew him affectionally as "the Hogger," and it speaks much for the warm humanity of his character that his rare scholarship did not build around him any wall of exclusion from his fellows, and more particularly from the younger law students whom it was his mission to guide. His father was a solicitor, and he must have been proud to follow his son's career, from his double first in history and law at Oxford, to the Barstow Scholarship and studentship, followed by his fellowship at St. John's College, where he taught for twenty-five years and produced the first three volumes of his great work, "The History of English Law." From 1903 to 1908 he was Professor of Constitutional Law at University College, London, and in 1910 he became All Souls' Reader in English Law. Later he became a Bencher of Lincoln's Inn, and in 1920 he took silk. In 1922 he was elected to the Chair which he held to the day of his death. Many other great law books stand to his credit, but his achievements were not only in the academic field, for from 1930 to 1932 he sat as a member of the Committee on Ministers' Powers. In 1943 he received the outstanding distinction of the Order of Merit. Of the late Sir William Holdsworth it can be truly said that his name will live as a lawyer long after the names of some of our better known advocates of to-day are forgotten.

The Bar Council.

AMONG the interesting items of information contained in the Annual Statement of the General Council of the Bar for 1943 appear the terms of a resolution, on the motion of the Attorney-General, to send a message of congratulation and sympathy to the lawyers of the Soviet Union, and the terms of the cordial reply received, signed by the Chairman of the Presidium, Collegium of Lawyers in the Cities of Moscow, Leningrad and Stalingrad, and by other lawyers. The "lower branch" will note with interest that the librarian of the Supreme Court Library, Melbourne, has made the generous suggestion that if English law libraries which have suffered from enemy action write to him or to the Australian Institute of Libraries, c/o Public Library of New South Wales, Sydney, about duplicates of old text-books and reports which could be made available after the war, consideration will be given to what aid may be given. The Annual Statement also reveals that the Bar Council in its memorandum to the Matrimonial Causes (Trials in the Provinces) Committee recommended that increased facilities should be given for the trial of both defended and undefended causes and that those facilities can be given by providing for the appointment of additional judges of the Divorce Division to go on circuit solely for the trial of such causes. The committee substantially adopted this proposal, adding that an increased attendance at assizes of counsel experienced in divorce work would be necessary, and if this did not adjust itself spontaneously under existing circuit rules, the Bar should accept the responsibility of finding some adequate solution. The Annual Statement shows that the matter had already received the attention of the Council on 15th April, 1943, when a resolution was passed approving the suggestion that a London Divorce Bar Association be formed of experienced divorce counsel, and membership should give the right to do divorce work at any provincial town without a special fee or a circuit junior. This plan was not pressed, owing to opposition from the circuits. A matter affecting the conduct and practice of the profession which will be of interest to solicitors is referred to in the statement. It lays down the rules that (1) when a junior counsel who appeared for the prosecution or defence in a criminal case which is committed for trial is appointed a King's Counsel before the trial, he may appear without a junior; (2) when a junior counsel is briefed to go special on a circuit other than his own, and after accepting the brief is appointed a King's Counsel, he is not entitled to ask for a leader's special fee and may appear with a junior's special fee. Solicitors will be grateful for this useful information.

Circuit Restrictions.

THAT a powerful case can be put forward in favour of the retention of the circuit system of administration of justice is made apparent in a memorandum submitted by the General Council of the Bar to the Matrimonial Causes (Trials in the Provinces) Committee, and epitomised in the Council's recently published Annual Statement for 1943. Circuit restrictions, it is stated, ensure that there will be a number of barristers present and available at the courts on the circuits to conduct the cases. Under the circuit system breakdowns of the due administration of justice do not occur through non-attendance of barristers. The circuit system, it adds, has the result that in cases of special difficulty King's counsel and juniors of special experience will be available at substantially lower fees than would be required by men of equal standing not holding themselves out for work at a distance from London. Moreover, the intimate knowledge that members of a circuit have of each other is beneficial to suitors in the settlement of actions—an important duty of counsel in many cases. From the point of view of training of barristers, circuits have always been found beneficial, and it is reasonable, the memorandum states, after this training and the expense it involves, that members of circuits should have special opportunity so that they obtain a chance of remunerative practice in the places where they are prepared to do unremunerative work, without excessive competition from those prepared to attend for remunerative work only. The circuits uphold a high standard of professional conduct, which is specially valuable where barristers have a local background which can easily lead to abuses. The memorandum does not, except by implication, refer to the great traditions of the circuits, which conduce to the maintenance of high professional standards. Many of the advantages to which the Council points may be achieved in smaller and more local associations of barristers than those of the larger circuits, but the corporate feeling of a circuit is inseparable from its great traditions, and this great factor in the maintenance of a high standard of professional conduct should not be lightly diminished.

Jurisdiction of the Courts.

IN *The Times* of 1st January there appeared a letter, the contents of which may well cause a stir among those who wish for legal reform, but desire established institutions not to lose their familiar outward appearance. Sir JOHN BEAUMONT, who wrote the letter, refers to his twenty-five years in practice of the Chancery Bar in England, and more than thirteen years on the bench in India, and says that he returns to this country in time to hear the familiar cry of more King's Bench judges. As General Smuts has reminded us that England in the future is likely to be a poor country, the question arises as to whether we are making the best use of existing material. Sir JOHN asks whether it is really necessary to pay a high salary and pension to a highly skilled lawyer, and then employ him in trying running-down cases, which constitute so considerable a part of the work of the King's Bench Division, the ordinary run of criminal cases, in which the law is settled, and divorce cases, many of which are undefended, and few of which require any extensive legal knowledge on the part of the judge. Sir JOHN asks why there is a reluctance to make full use of the county court. There are, he writes, four Chancery King's counsel on the High Court bench and seven on the county court bench. Having worked at the Bar with all those judges, the writer has no hesitation in affirming that it is incorrect to suppose that, whereas the High Court judges

are fit to try all cases, county court judges are unfit to try cases in which the subject-matter exceeds £500 in value. The present terms of employment attract good men to the county court bench, and it is absurd to suppose that they are only fit to try trumpery cases. The writer goes on to argue that if the generality of cases, civil and criminal, were tried by local judges, with summary powers in respect of small cases, and the High Court judges were reserved for appellate work and the trial of original cases which involve some difficulty (which, broadly speaking, is the Indian system), much money would be saved, without loss of efficiency. No doubt, the writer states, such an arrangement would disturb many vested interests and involve some break with tradition; but these are features inseparable from most serious schemes for economy in the public service. The basis of the writer's argument seems to be a plea for economy, based on a prophecy by General Smuts, who would be the last to claim infallibility as a prophet or as an economist. Indeed, there are some economists who differ from the view expressed by General Smuts. The real question is whether a new system of judicial circuits and duties can be summarily substituted for a system which has grown for a thousand years to be a model for English-speaking peoples all over the world. The tradition from which the writer suggests that we break has given the world some of its greatest judges, and greatest laws. The only other criticism that we wish to make, and it appears to be vital, is that it is often impossible to predict before a case is heard whether it is going to be difficult. *Swadling* v. *Cooper* [1931] A.C. 1, was a House of Lords decision on an every-day point of law of great difficulty in running-down cases, i.e., as to the proper question for a judge or jury where the plaintiff's and defendant's negligence are difficult to separate in point of time. *Hollington* v. *Hewthorn* (1943), 87 SOL. J. 247, was another Court of Appeal decision in point on an every-day point as to the admissibility of a motoring conviction as evidence of negligence in a running-down case. The real difficulty will be in drawing the line between cases difficult enough for the High Court and those not difficult enough. It will, we submit, be much better in any scheme of judicial reform, to build upon the firm foundations of the past than to try to erect a new building on an alien model. At the time of going to press we note Mr. Justice ASQUITH'S admirable reply, in *The Times* of 6th January, to Sir JOHN BEAUMONT'S letter, and respectfully agree with all that it contains.

Transfer of Securities.

THE current issue of *The Law Society's Gazette* contains a new notification by the Treasury of the changes made as from 22nd October, 1943, in relation to blocked sterling accounts and payment of money to non-residents. The present position, it is stated, is set out in detail in the following documents: (*a*) a notice to registrars and company secretaries contained in the *London Gazette* for 22nd October, 1943, dealing with the payment of interest, dividends and capital repayments to non-residents; and (*b*) two notices to banks and bankers (Forms FE202 and 203). Application may now be made to the Bank of England for the release and transfer through appropriate types of account of certain classes of moneys paid to blocked sterling accounts before 22nd October, 1943. The Bank of England will give special consideration to applications for permission to transfer through appropriate types of account amounts payable to non-residents in respect, *inter alia*, of (i) distributions from estates of deceased persons who at their death were residents of the sterling area; (ii) distributions under settlements created by residents of the sterling area; and (iii) sales of real estate and personal effects. The whole or part of a balance on a blocked sterling account may be invested in any of certain authorised securities, which must be bought through the bank keeping the account, and registered either in the name of the account-holder as of his permanent residential address outside the sterling area, or in the name of the bank keeping the account or of his nominees in the United Kingdom. The authorised securities are enumerated in the Blocked Accounts (Authorised Investments) Order, 1943 (No. 1172).

Civil Judicial Statistics.

THE civil judicial statistics for 1942 were made available at the end of 1943. They show that the number of appeals to the House of Lords during the year was 34, as compared with 38 in 1941. Appeals set down in the Court of Appeal numbered 490, an increase of 78 as compared with 1941. Of this number 148 were appeals from county courts. The total of appeals and special cases entered or filed in the High Court from inferior courts was 258, an increase of 17 as compared with 1941. The total proceedings in the three Divisions of the High Court showed a decrease of 20 per cent. as compared with the preceding year, from 62,063 to 49,369. In the Chancery Division there was a decrease of 4,159 to 6,781. In King's Bench there was a decrease of 11,970 to 29,829, and in Probate, Divorce and Admiralty there was an increase of 3,435 to 12,759. The number of matrimonial petitions filed during the year 1942 was 12,131, an increase of 3,743 over the preceding year. The number of petitions filed during the year for dissolution of marriage included 3,630 petitions for desertion, 509 petitions for cruelty, 223 petitions for lunacy, and 39 petitions for presumed decease. Application for leave to present a petition for divorce within three years of the date of the marriage was made in 105 cases, and in 49 cases the petition was allowed. The total number of decrees *nisi* for dissolution of marriage was 8,608; 4,528 being on husbands' petitions, and 4,080 on wives' petitions. Matrimonial causes to the number of 4,564, of which 1,039 were poor persons' cases, were tried at the assize towns exercising this jurisdiction. The total number of poor persons proceedings increased by 697 to 2,791. Matrimonial causes formed 96 per cent. of the total, increasing by 700 to 2,678. Petitions filed at district registries decreased by 923 to 1,119. Poor persons were successful in 91 per cent. of the causes tried to which they were parties. The number of proceedings commenced in county courts showed a decrease of 27 per cent. as compared with the preceding year, from 533,100 to 390,566. Of the actions for trial 44 per cent. (193,792) were determined without hearing or in the defendant's absence. Of the actions determined on hearing, 76 per cent. were determined before a judge and the remaining 24 per cent. before a registrar. Judgment summonses issued in county courts in 1942 numbered 179,891, as compared with 219,979 in 1941; and 106,337 were heard (132,015 in 1941). The efficacy of the threat of committal is proved by the fact that 70,674 orders of commitment were issued, and only 550 debtors were imprisoned (88,117 and 864 in 1941). There were 131,126 executions against goods as against 161,860 in 1941, and 19,524 hire-purchase actions for recovery of possession as against 19,992 in 1941. There were only 1,532 plaints for amounts over £100, as compared with 2,826 in 1941. Workmen's compensation memoranda of agreements registered numbered 20,687 as against 18,707 in 1941.

War Damage.

FOR one of the most brilliant and informative accounts yet published of the actual working of the War Damage Act, 1943, we refer our readers to the verbatim report published in the current issue of *The Law Society's Gazette*, of an address by Sir MALCOLM TRUSTRAM EVE, Bart., K.C., Chairman of the War Damage Commission, to the members of The Law Society at The Law Society's Hall on 18th November, 1943. The Chairman's address is full of practical advice on points which frequently baffle solicitors, and it will amply repay a close perusal. Among interesting figures which he gave was that from March, 1941, until October, 1943, 1,715,000 claims had been received, of which 1,087,000 were due for money at once. Of these 1,047,000 had been paid. The present balance of 40,000, the Chairman said, represents a five weeks' in-put. From 1st January, 1943, until mid-October, 348,000 claims were received and 355,000 claims were paid in full settlement, and a further 9,000 on account, together making an average of nearly 9,000 a week, or 1,750 every working day. One of the interesting points Sir MALCOLM made was that the formula for total loss in s. 7 required a unit, and no smaller unit could be taken than one physical building. A block of flats was one unit, and Sir MALCOLM said that he would be grateful to anybody who could devise a method of working this formula with something less than one building. Another point made by the Chairman was that the words "value as a site and with the damage not made good" meant that where a purchaser would in fact reduce his price because he would be put to expenditure in getting rid of the ruins for the purpose of the development for which he is paying the price, then the net cost of renewing those ruins is a proper deduction. With regard to restrictions subject to which the sales of land are assumed to take place, Sir MALCOLM said that he was advised that the obligation imposed under the Defence Regulations to obtain a building licence from the Ministry of Works, was not a restriction to be regarded. Another difficult question was as to what hereditaments consisted of, or comprised premises of a kind not normally the subject of sales in the open market, within s. 7 (2) and S.R. & O., 1942, No. 2490. A good example, Sir MALCOLM said, was a local authority house, and this would fall within the class, even though an odd one was occasionally sold in the open market. We also recommend a close reading of the address for its full explanation of the new forms Val. 1, Val. 2, Val. 3, and Val. 4. The legal profession has cause to be grateful to Sir MALCOLM for the enthusiasm and outstanding ability which he infuses not only into the actual work of administration, but into securing that the professions concerned and the general public thoroughly understand what is being done, and why.

Recent Decision.

In *Reid* v. *Coggans* (*or Reid*) on 21st December (p. 16 of this issue), the House of Lords (the LORD CHANCELLOR, LORD THANKERTON, LORD RUSSELL OF KILLOWEN, LORD MACMILLAN and LORD WRIGHT) held that a bond by a father to pay "during my life an annuity of £480 sterling and that yearly on 1st March in each year beginning the first payment thereof on 1st March, 1933, for the year preceding and so forth yearly during my lifetime" meant, according to the plain words of the instrument, that the annuity was granted for the lifetime of the grantor, and accordingly, when the grantee died before the grantor, the annuity must be paid to his widow. If no time had been specified in the grant, it would have been presumed to be merely for the lifetime of the grantee (*Savory* v. *Dyer* (1752), Ambler, 139).

A Conveyancer's Diary.

1943. Chancery—II.

THE Law Reports for 1943 are remarkable for the absence of any example of the familiar class of case which concerns the distribution of estates where annuities are given by will but where the estate is "actuarially insolvent" owing to increase in taxation or otherwise. They include two cases on the effect of s. 25 of the Finance Act, 1941, *Re Westrik* [1943] Ch. 3 and *Re Tredgold* [1943] Ch. 63, which have been already noticed in this column. There are two specimens of a third group of cases where the underlying fact is the increase in direct taxation, viz., those on the construction of gifts of tax-free annual sums. *Re Sharman* [1943] Ch. 5 dealt with a settlement made in 1928 by a settlor for the benefit of his former wife, their marriage having been dissolved in 1926. The parties were the settlor, his former wife, and the trustees. The settlor covenanted to transfer certain investments to the trustees. They were directed to pay the income of the fund so transferred to the settlor's former wife for her life. By cl. 10 it was provided that if and whenever during the life of the life-tenant "the net income of the trust fund in any year after deducting income tax and super-tax and any other tax on income falls short of £3,000" the settlor should pay to the life tenant or her personal representatives enough to make the net income up to £3,000. The settlor died very shortly after the date of the settlement and the life tenant died in December, 1939. She had been assessed to sur-tax on the income of the settled fund for 1938–39, such tax being payable on 1st January, 1940. She or her representatives would in due course be assessed to sur-tax for 1939–40, payable on 1st January, 1941. The income after deducting income tax and sur-tax was under £3,000. The question to be decided was, in the words of Bennett, J., "whether the settlor's estate is, or the legal personal representatives of the life tenant are, liable to pay" these last two assessments. The point was, of course, whether these deferred instalments of sur-tax, payable after the life tenant's death, counted as sur-tax which had to be deducted from the income of the fund in ascertaining whether the income amounted to £3,000 a year in the life tenant's life. Counsel reminded the learned judge that he had left this point open in *Re Hulton* [1931] 1 Ch. 77, see p. 84. Bennett, J., stated that in his view the only question was upon the construction of cl. 10; the deed did not mention sur-tax, but the parties agreed that the reference to "super-tax" must cover sur-tax. The draftsmen had clearly not envisaged this particular eventuality and it was necessary to "find out as best one can what was the intention of the covenantor." Upon the true construction of the document, he held that the covenantor promised that he would defray any liability to income tax or super-tax attaching to the life tenant or her personal representatives in order that she might during her life enjoy the income exonerated therefrom to the extent mentioned. This decision seems likely to cover a good many cases of the class, since there was nothing unusual about the language of the deed.

In *Re Goodson* [1943] Ch. 101 the settlement was made in 1925. Before its execution the settlor had transferred certain investments to the trustees. Such transfer was recited in the settlement, which went on to give certain annuities, one of which was of £4,000 to the settlor's wife. The settlement declared that each annuity should be enjoyed free of income tax and added that the trustees should, in addition to each annuity, pay the income tax payable in respect thereof after allowing for any exception or abatement to which the annuitant might by law be entitled having regard to the amount of her income. The settlor's wife executed the deed, but no other annuitant did so. The question upon which the decision is reported was whether those arrangements were valid, having regard to Income Tax Act, 1918, All Schedules Rules, r. 23 (2), whereby "any agreement for payment of interest, rent, or other annual payment in full without allowing (for deduction of income tax) shall be void." Uthwatt, J., held that a settlement such as this was not an agreement. It comprised the declaration of trusts, creating equitable interests, in a fund already transferred to trustees. No annuitant could succeed in an action against the settlor to enforce any provision of the settlement. Rule 23 (2) was therefore inapplicable. The effect of this decision is to make it clear that the rule applies only to arrangements strictly contractual. Such a condition is, of course, not fulfilled by a will, nor by a purely unilateral post-nuptial settlement. The position might well be different on a bilateral settlement, i.e., one into which both parties bring assets, or on a pre-nuptial settlement where the fact that the arrangements are made for consideration that is still executory seems to import a consensual element even if the fund has already been handed to the trustees.

There is one case on the Settled Land Act, 1925, *Re Fitzwalter* [1943] Ch. 285, a decision of the Court of Appeal (Lord Clauson, du Parcq, L.J. and Bennett, J.) allowing an appeal from the judgment of Simonds, J. Certain land stood limited upon the trusts of a strict settlement of 1861 under which A was the present tenant for life. The previous tenants for life had been unimpeachable for waste. Simonds, J., and the Court of Appeal held that A was impeachable for waste. At some date or dates not stated, mining leases had been granted by one or more of the previous tenants for life under the power contained in the Settled Land Act, 1925, or one of its predecessors. The question was what proportion of the rents arising thereunder had to be capitalised. Section 47 of the Settled Land Act, 1925, provides that "Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely—where the tenant for life is impeachable for waste in respect of minerals, three fourth parts of the rent, and otherwise one fourth part thereof." One would have supposed that there could be no ambiguity, and so Simonds, J., appears to have thought, since he held that A was impeachable for waste and that three-quarters of the rents must be capitalised. The reserved judgment of the Court of Appeal was read by Lord Clauson. After reciting the issue, his lordship stated that it is settled law that, apart from statutory provisions, a tenant for life unimpeachable can open mines and take all the profits thereof. If he is impeachable he cannot open mines at all. But if mines have lawfully been opened by a predecessor in title of the tenant for life, he can work them and take all the profits despite being impeachable. Apart from the Settled Land Acts, therefore, the present tenant for life could, said Lord Clauson, have taken all the profits of the mines if they had been lawfully opened by one of the previous tenants for life. The authority here relied on was *Re Hall* [1916] 2 Ch. 488. He next referred to *Re Chaytor* [1900] 2 Ch. 804, a decision of Stirling, J., where it was held that the expression "impeachable for waste in respect of minerals" in the section of the Settled Land Act, 1882, which corresponded to s. 47, did not cover a tenant for life, even though not declared unimpeachable, in his relation to a mine already open when he came into possession. *Re Chaytor* did not bind the Court of Appeal, but it had been unquestioned for over forty years and they would be reluctant to overrule it, even if they disagreed with it. Lord Clauson added that so far from disagreeing "we agree with the reasoning on which it is founded." Such reasoning was that "minerals" in the section cannot mean minerals entirely at large and that the choice was between "minerals comprised in the settlement" and "such minerals as are comprised in the mining lease in question," the latter being the more natural. It is not very easy to follow this point. Stirling, J., also used another argument which turned on the fact that the Settled Estates Act, 1877, was in force when he spoke, in addition to the Settled Land Act, 1882. Such a point, whatever its original force, could have no meaning now, since the Act of 1877 was repealed by that of 1925. The most solid ground for the decision in *Re Fitzwalter* thus was that it is too late to upset *Re Chaytor*. The position does not seem at all satisfactory; the scheme of the Settled Land Act seems to be to institute a code for the granting of mining leases of settled land. It enables the grantor to grant a term of years certain instead of an interest terminable with his own life. This extra security for the tenant will mean that he pays a better rent. Such a lease can be granted, whether or not the grantor is impeachable, and finally the Act regulates the destination of the rentals. It seems surprising that Parliament should have taken the trouble to enact s. 47, at least in its present form, if the only occasion on which three-quarters of the rent is to be capitalised is during the lifetime of a grantor who was impeachable. There was something to be said for the common law position, because everyone understood that the tenant for life under a settlement could not open mines at all unless express words were inserted to free him from liability for waste, and so the settlor had his eyes open. Again, if the settlor had the fee simple and had opened mines, he could make such arrangements as he chose for the income interests of limited owners claiming under him. But in the Settled Land Acts, Parliament intervened and conferred extensive powers on tenants for life even if impeachable. It seems all wrong that after a single change of life-tenant, three-quarters of the mining rents, which are really payments for the purchase of part of the realty, should be treated as income. If there is not an appeal, or if an appeal fails, this is one of the small matters, referred to in my article last week, to which the reformers might give attention.

Professional Announcement.

MESSRS. GODDEN, HOLME & WARD, of 34, Old Jewry, London, E.C.2, announce that Mr. MAURICE SUCKLING WARD retires from the partnership on the 31st December, 1943, and that as from the 1st January, 1944, they have taken into partnership Mr. HAROLD WALTER SHARP, who has been associated with them for many years. The firm's business will in future be carried on by Sir Randle Holme, Mr. Leonard Plowman, Mr. E. Lawrence N. Tuck, Mr. E. Gordon Sykes and Mr. Harold Walter Sharp and the firm will revert to its former name of GODDEN, HOLME & Co.

Landlord and Tenant Notebook.

Unauthorised Alienation by Protected Tenant.

I POINTED out in last week's "Notebook" that when a tenant sub-lets in breach of covenant, the sub-tenancy is none-the-less valid, though the head lessor may be able to destroy it by virtue of a power of re-entry; but that if the premises are controlled, the position of the sub-tenant is less clear.

I will set out, first, three provisions designed to confer security of tenure on sub-tenants; and then, two provisions designed to safeguard the interests of (head) landlords.

The Increase of Rent, etc., Act, 1920, s. 15 (1) says: "A tenant who *by virtue of the provisions of this Act* retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to *all* the terms and conditions of the original contract of tenancy, so far as the same are *consistent with the provisions of this Act . . .*" *Ib.*, (3) runs: "Where the interest of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for *any other reason*, any sub-tenant to whom the premises or any part thereof have been *lawfully* sub-let shall, *subject to the provisions of this Act*, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued." And, by s. 5 (5) of the same statute: "Any order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been *lawfully* sub-let before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be *in any way operative* against any such sub-tenant."

Now for the landlord's rights. The Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1), provides that no order for possession shall be made unless the court considers it reasonable to make such an order and either (*a*) the court has power so to do under the provisions set out in the First Schedule to the Act, etc. Two of those provisions are in point: (*a*) "Any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether *under the contract of tenancy or under the principal Acts*) so far as the obligation is consistent with the provisions of the principal Acts has been broken or not performed"; and (*d*) "The tenant without the consent of the landlord has at any time after 31st July, 1923 [for 1939 control houses, 1st September, 1939] assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sublet."

The problem I propose to discuss may be put this way: what prospects of success has a sub-tenant of controlled property whose argument is "The head lease may have prohibited sub-letting, but according to *Parker* v. *Jones* [1910] 2 K.B. 34, the grant by the mesne tenant was effective; at least, if Darling, J.'s, dictum be treated as such, the head landlord has no rights against me apart from forfeiture. Forfeiture leaves me cold: I am protected where the interest of the head landlord determines for any reason. And no obligation of *my* contract of tenancy has been broken or not performed."

This will mean that the landlord will set about exploring the possibilities suggested by the expressions "consistent with the provisions of this Act," "lawfully" and "under the principal Acts," which qualify the sub-tenant's security of tenure. What do these expressions mean?

The authorities on "lawfully sub-let" are *Dick* v. *Jaques* (1920), 36 T.L.R. 773, and *Chapman* v. *Hughes* (1923), 39 T.L.R. 260. In the former, a claim (for possession) was brought against the tenant of a flat and a sub-tenant to whom he had sub-let (the whole of) it without obtaining the consent stipulated for in a covenant, and proceedings were based on a right of re-entry. The tenant did not defend, and the sub-tenant's arguments were that he had paid the rent and performed the conditions of his tenancy. Peterson, J., having decided that this was not a case for relief, held that the tenant was not protected because he had broken a term of his agreement, and that the protection afforded by the words "so long as the tenant continues to pay rent at the agreed rate . . . and perform the other conditions of the tenancy" simply did not apply to sub-tenancies at all.

This case is commonly cited as authority for the proposition that "unlawfully sub-let" includes sub-let in breach of a covenant against alienation. But in my view insufficient attention has been paid to two factors: (1) The decision was under the old Increase of Rent, etc., Act, 1915. The words cited occur in s. 1 (3) of that statute. Those of s. 15 (1) of the 1920 Act cited above: "a tenant . . . shall . . . be entitled to all the terms and conditions of," etc., coupled with those of Sched. I (*a*) to the 1933 Act (also cited above): "any rent lawfully due from the tenant has not been paid, or any other obligation . . . broken or not performed," are their present-day counterpart. But—the 1915 statute did not contain the "sub-tenant's charter" now expressed by ss. 15 (3) and 5 (5) of the 1920 Act (see above). Consequently, it is now arguable that a sub-tenant who observes the terms of his own agreement is protected. (2) The case was one of sub-letting the whole of the demised premises, and the present 1933 Act, Sched. I (*d*) (see above) does not therefore apply.

Chapman v. *Hughes* was a case in which a tenant, who was under covenant not to permit the premises to be used for business purposes, sub-let part of them to a piano tuner, authorising him to carry on his business in the rooms he took; the tenant then surrendered her term, and the action was brought against the tuner. He relied on ss. 15 (3) and 5 (1) of the 1920 Act. Salter, J., considered the question "not free from difficulty," but held that "an obligation of the tenancy had been broken" within the meaning of what is now Sched. I (*a*) to the 1933 Act, with the result that the plaintiff was entitled to succeed. This case, then, is authority for the proposition that a superior landlord is entitled to recover possession against a sub-tenant by reason of a breach of a covenant in the head lease, though the terms of the sub-tenancy are observed. But the plaintiff did not win on the ground of "unlawful" sub-letting.

On what is meant by "lawfully sub-let" we have a useful dictum of Eve, J., at the conclusion of his judgment in *Roe* v. *Russell* [1928] 2 K.B. 117. "The presence of the qualifying word" his lordship said, "is, I think, explained by this, that there are *at least* two forms of sub-letting which are not lawful under the Acts: one, a sub-letting which sub-lets the whole of the dwelling-house, or sub-lets a part, the remainder being already sub-let, and the other a sub-letting made after the commencement of proceedings for recovery of possession, or ejectment." The "at least" indicates judicial caution; but it seems sound to say that "lawfully" when it qualifies "sub-let," means "without infringing any statutory provision" rather than "without breaking any contract." To succeed against a sub-tenant of part, then, a superior landlord must rely on a covenant in the head lease, and on *Chapman* v. *Hughes*, in which, I would add, the proposition suggested in the fifth paragraph of this article was not strenuously argued (the main contention being that breaches of the contractual tenancy, as opposed to a statutory tenancy, were not covered) and the sub-tenant was, moreover, found to be guilty of nuisance and annoyance which would, in themselves, have justified an order for possession.

Books Received.

An Introduction to the Principles of Land Law. By A. D. HARGREAVES, M.A., LL.B., Solicitor. 1944. Demy 8vo. pp. xii and (with Index) 204. London: Sweet & Maxwell, Ltd. 16s. 6d. net.

Burke's Loose-Leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-Law. 1943 volume. Parts 13 and 14. London: Hamish Hamilton (Law Books), Ltd.

Outlines of Central Government. By JOHN J. CLARKE, M.A., F.S.S., of Gray's Inn, Barrister-at-Law. 1943. Crown 8vo. pp. viii and (with Index) 324. London: Sir Isaac Pitman and Sons, Ltd. 9s. net.

Tables of Weekly Compensation as increased by the Workmen's Compensation (Temporary Increases) Act, 1943. By H. MORGAN HUGHES, A.C.I.I., Insurance Claims Assessor. 1943. pp. 12. London: Stevens & Sons, Ltd. 3s. 6d. net.

The Juridical Review. Vol. LV. No. 3. December, 1943. Edinburgh: W. Green & Son, Ltd.

The American Patent System. Report of the National Patent Planning Commission. Washington, D.C. 1943.

Obituary.

SIR WILLIAM HOLDSWORTH.

Sir William Holdsworth, O.M., K.C., D.C.L., Vinerian Professor of English Law in the University of Oxford, died on Sunday, 2nd January. An appreciation appears at p. 9 of this issue.

MR. I. V. DOWNING.

Mr. Ivor Vincent Downing, solicitor and senior partner of Messrs. Downing & Handcock, solicitors, of Cardiff, died on Saturday, 25th December, aged sixty-four. He was admitted in 1903.

MR. A. B. LLEWELLYN JONES.

Mr. Alfred Bruce Llewellyn Jones, solicitor, of Messrs. D. Roger Evans & Jones, solicitors, of Newport, died recently. He was admitted in 1900.

MR. C. W. LETTS.

Mr. Charles William Letts, solicitor, formerly of Bartlett's Buildings, Holborn, E.C.1, died on Tuesday, 28th December, aged seventy-eight. He was admitted in 1888.

MR. T. MOORE.

Mr. Thomas Moore, solicitor, senior partner of Messrs. Watts, Moore & Bradford, of Yeovil, died recently, aged sixty-one. He was admitted in 1914.

To-day and Yesterday.

LEGAL CALENDAR.

January 3.—On the 3rd January, 1662, a magnificent entertainment was presented to Charles II by "the Noble Prince de la Grange, Lord Lieutenant of Lincoln's Inn." The principal performance consisted in an exhibition of "Universal Motion, The several Modes of Dancing, according to the Primitive Invention of different Nations, performed in 12 Entries, In the habit of each Country, by English men." First came "A Clownish Carrier with a Packet of Books to be distributed by the Master of the Ceremonies, wherein is described the whole designe, who daunceth a Darbishire Round." Next came "A Bouree in the habit of a Thrasonical Gasconian; to let you know all Frenchmen are not Butterflies." Next, a Quaker, "the last inventor of ecclesiastical postures," presenting "the variety of expressions made by motions and actions of the body only." Next, "the truest and most genuine steps of Ballet." Next, "a jig, the first-born of the Scottish bag-pipe," danced by "two other clowns with their lasses." Next, a saraband by a Spaniard "to show a phantastick Don can be as ridiculous as the most antick Mounsieur." Next, a drunken Dutchman. Next, a country dance by Arcadian shepherds and shepherdesses, showing "the innocency of their minds by the simplicity of their manners." Next, a corant and a saraband serious, by a Frenchman. Next, Italian Pantaloons "to show there are madmen and fools in every country, even at Rome, Paris and particularly in London." Next, "the Canaryes, first invented by the lofty Italian, who generally has more wit than honesty." Finally, "an entry of Swises who would rather fight than dance but love the argent better than both."

January 4.—On the 4th January, 1677, Sir Mathew Hale, formerly Chief Justice of the King's Bench, was buried in the churchyard of his native village of Alderley in Gloucestershire. Churches, he said, were for the living, churchyards for the dead. The ceremony was intended to be very private, but many country people from the surrounding villages came to the ceremony for they regarded him as a saint and thought there was virtue even in touching his coffin. The vicar, preaching from the text Isaiah lvii, 1, declared that beyond the "troubles of this wicked world, in which the Devil and his angels are constantly plotting destruction of the bodies and souls of men . . . he might with pious confidence attend the last assize and expect a sentence of acquittal from the great and merciful Judge of mankind."

January 5.—On the 5th January, 1764, "a court martial was held at Plymouth on a colonel, for drawing his sword upon a lieutenant and wounding him, at the breaking up of which the colonel made a polite speech, setting forth how happy he thought himself in having gentlemen, whose singular virtues and abilities were so well known in a military life, to be his judges; that should their better judgment deem him guilty, he should kiss the rod with pleasure, though he hoped that, through a long series of years which he had been an officer, he had acted with a becoming spirit."

January 6.—In October, 1801, after the French forces had been driven from Egypt and the war with Napoleon had reached a condition of stalemate, negotiations resulted in a preliminary treaty which preceded the abortive Peace of Amiens five months later. Meanwhile the seamen of the *Temeraire*, belonging to the Bantry Bay squadron, hearing that they were ordered to the West Indies, decided that, since the war was over, they would not sail. For a while the situation was alarming, since they were ready to kill their officers if force were used against them. They had been promised support by the men in the other ships and open revolt was only prevented by the firmness of Admiral Campbell and Captain Eyles and the loyalty of the Marines, who restored order. On the 6th January, 1802, fourteen of the mutineers came up for trial before a court martial sitting on board the *Gladiator* at Portsmouth. All but one were found guilty and condemned to death.

January 7.—When the South Sea Bubble burst, at the end of 1724, it became known that the suitors of the Court of Chancery were among the sufferers, the Masters having speculated with the funds entrusted to their care. The scandal grew when it became apparent that Lord Macclesfield, the Lord Chancellor himself, was implicated by reason of his practice of selling masterships for exorbitant sums. The Great Seal was taken from him and on the 7th January, 1725, it was put into commission. Sir Joseph Jekyll, Master of the Rolls, Mr. Baron Gilbert and Mr. Justice Raymond were the Commissioners, the King instructing them to make entire satisfaction to the suitors, to see that they were not in future exposed to dangers and to look narrowly into the behaviour of all the officers under their jurisdiction.

January 8.—Thomas Twisden was born at Roydon Hall in Kent on the 8th January, 1602. He was called to the Bar by the Inner Temple in 1625. Though in the troubles of the Civil War and the years following it his sympathies were Royalist, he continued to practice his profession and in 1654 consented to accept the degree of serjeant-at-law, albeit reluctantly. On the Restoration in 1660, he was legitimately invested with the coif and appointed a judge of the King's Bench.

January 9.—John Wesket was employed by the Earl of Harrington as a porter at his London house. Having determined to rob his master, he let in an accomplice, named Bradley, one night and together they broke open his bureau where they found notes, money and jewels to the amount of £2,000. These Bradley took to his lodging in Little Turnstile, at the house of a chandler, named Cooper. Next morning suspicion fell on Wesket, though there was no conclusive proof against him, and he was dismissed. Though Bradley went as far as the Chester Fair to dispose of the notes, a chain of circumstances eventually enabled the authorities to trace him and he was arrested at Wapping disguised as a seaman. He gave evidence against his accomplice, and on the 9th January, 1765, Wesket was hanged at Tyburn for the robbery. Cooper was transported for receiving the stolen goods.

BARRISTER-PREMIER.

An article in a Sunday newspaper recently recalled the murder of Spencer Perceval, the unfortunate Prime Minister shot in the lobby of the House of Commons by a man with a grievance against the Government. It also recalled how that night, long before the news could have reached Cornwall by the methods of 1812, a man at Redruth thrice dreamt the scene in every particular. Apparently the night before the crime Perceval himself had been much disturbed by a similar vivid dream. The event has an extraordinary number of points of interest, not the least of which was the indecent haste with which John Bellingham was tried and executed for the murder within the space of a week, though his whole conduct and attitude clearly suggested insanity and his father was insane before him. "So great an outrage upon justice never was witnessed in modern times," wrote Brougham. But for the Bar the chief interest in the matter is that Perceval was a barrister, and a successful one, before he was a minister. He was a member of the Midland Circuit, took silk in 1796, when his professional income was just over £1,000 a year, and saw it rise to between £4,000 and £5,000. He had been Solicitor-General and Attorney-General and had declined the Chief Justiceship of the Common Pleas before he became Chancellor of the Exchequer, reluctantly, for the financial sacrifice was considerable. Eventually he came to be Prime Minister. To his virtues even his assassin bore witness, but his abilities as a statesman did not strike all his contemporaries as transcendant. "He is a fly in amber," wrote Sydney Smith. "Nobody cares about the fly; the only question is: How the devil did it get there?" In another passage he wrote: "You tell me he is faithful to Mrs. Perceval and kind to the Master Percevals! These are undoubtedly the first qualifications to be looked to in a time of the most serious public danger; but somehow or another (if public and private virtues must always be incompatible) I should prefer that he destroyed the domestic happiness of Wood or Cockell, owed for the veal of the preceding year, whipped his boys and saved his country." Since his tragedy may seem to make this too harsh for a closing judgment, let Sir Samuel Romilly sum up: "With very little reading, of a conversation barren of instruction and with strong and invincible prejudices on many subjects; yet by his excellent temper, his engaging manners and his sprightly conversation, he was the delight of all who knew him."

War Legislation.

STATUTORY RULES AND ORDERS, 1943.

E.P. 1648. **Apparel and Textiles** (Fur Apparel) Returns. Order, Dec. 21, *re* information and returns relating to Fur Apparel.

E.P. 1680. Apparel and Textiles. Utility Apparel (Men's and Boys' Shirts, Underwear and Nightwear) (No. 3) Directions, Dec. 17.

E.P. 1730. **Consumer Rationing.** Direction, Dec. 18, under the Consumer Rationing (Consolidation) Order, 1943, *re* application of art. 5 of that Order to Local Authorities, Railway Companies and the L.P.T.B.

No. 1717. **Customs.** (Export of Goods) (Control) (No. 10) Order, Dec. 20.

E.P. 1738. **Food** (Feeding Stuffs) (G.B.). Order, Dec. 18, amending the Feeding Stuffs (Regulation of Manufacture) Order, 1943.

E.P. 1751. Food (Poultry) (G.B.). Order, Dec. 22, amending the Poultry (Control of Sales of Stock Poultry in December) Order, 1943.

No. 1728. **Parliamentary Elections.** The Electoral Registration Regulations, Dec. 8.

No. 1737. **Supplementary Pensions** (Determination of Need and Assessment of Needs) Regulations, Dec. 16.

E.P. 1683. **Toilet Preparations** (No. 4) Order, Dec. 24.

Our County Court Letter.

Sheep Worrying by Dogs.

In *Robinson Brothers* v. *Arrowsmith and Smith* at Northampton County Court, the claim was for damages in respect of four ewes killed outright by the defendants' dogs, and six ewes so badly mauled that they had to be destroyed. The value of the ewes was £4 10s. each, but a credit from the Ministry of Food (in respect of the six carcases of the ewes subsequently destroyed) reduced the claim to £37 15s. net. This was claimed against the defendants jointly, or alternatively against each defendant severally. The plaintiffs' case was that they and the two defendants owned neighbouring farms in the village of Denton. On Friday, the 18th December, 1942, at about 9.30 a.m., a neighbouring householder saw a sheep attacked by a Great Dane puppy, which she knew to be the property of the first defendant. The same dog was seen, at about the same time, by another householder and her maid. The dog was then running across a field, in company with another unidentified dog, from the direction of the plaintiffs' farm to the farm of the first defendant. At 11 a.m. the same morning two employees of the plaintiffs discovered a brown collie and a black and white sheep dog, both gnawing a dead sheep. The paw marks of a large dog were subsequently traced to the first defendant's farm. The next day the plaintiffs' two employees went with a police officer to the second defendant's farm, where they identified the two dogs they had seen eating the dead sheep the previous morning. The first defendant's case was that his Great Dane puppy was chained up that morning at 9.15 a.m., as appeared from the evidence of his wife's maid, a cowman and a tractor driver. The second defendant's case was that his dogs had never left his farm that morning, as they spent the time near the mangold pit with four of his employees, who gave evidence to that effect. His Honour Judge Forbes observed that the difficulty was to decide when the damage was done. The contention for the plaintiffs was that the events of the morning constituted one incident. There was no evidence, however, that either of the dogs of the second defendant had participated in doing damage with the first defendant's dog at 9.30 a.m. The second defendant's dogs were not seen on the plaintiff's farm until 11 a.m. They were apparently then "looting after a raid." Nevertheless, this did not render their owner liable for the original damage. Judgment was therefore given for the second defendant against the plaintiffs with costs. Judgment was given for the plaintiffs against the first defendant for the whole amount claimed, with costs. An application by the plaintiffs for a *Bullock* order (i.e., for the payment of the second defendant's costs by the first defendant) was refused. The circumstances were not analogous to those of a cross-roads collision.

The above case was distinguished on the facts from *Arneil* v. *Paterson* [1931] A.C. 560. In that case the evidence was that two dogs, the property of different owners, acting in concert, attacked a flock of sheep and injured several. An action of damages brought in Scotland, under the Dogs Act, 1906, by the owners of the sheep against the respective owners of the dogs (craving a joint and several decree) was defended by one dog-owner only, who contended that he was only liable for half the damage. It was held by the House of Lords that, when once liability under the Act was established, the ordinary measure of damages had to be applied. In law, each of the dogs occasioned the whole of the damage, as the result of the two dogs acting together. Each owner was therefore liable for the whole of the damage.

Damage to Highway.

In *Monmouthshire County Council* v. *Morgan*, at Monmouth County Court, the claim was for £51 17s. 4d. in respect of damage to the road surface in the Crick Road. The plaintiffs' case was that the road surface was water-bound, and had been damaged for a distance of half a mile by the defendant, who had towed threshing tackle with a tractor. The spuds or lugs on the wheels had cut the road surface and made pot-holes. The defendant's case was that he had worked under the orders of the county war agricultural committee. The road was formerly limestone, and no harm resulted. He was unaware of the risk of damage to a macadam surface. The lugs on the wheels were only 10 inches wide, and the alleged cost of repairs was exaggerated. His Honour Judge Thomas gave judgment for the plaintiffs, with costs.

Hairdresser's Loss of Trade.

In *Dancer* v. *Mole and Others*, at Bletchley County Court, the claim was for £10 as damages for conspiracy, viz., causing the plaintiff to lose customers in his hairdressing business. The plaintiff's case was that he had been evacuated from London, and had opened a shop locally. The defendants, however, had said that they were "going to get a Jew out as things must be stopped." They had accordingly presented a petition to the Wolverton Urban District Council to restrain the plaintiff from using threatening and abusive language. Evidence was given of a decline in the plaintiff's trade. A submission that there was no case to answer was overruled. The defence was a denial of a conspiracy or the alleged damage. The first defendant was the secretary of the Stoney Stratford Ratepayers' Association, and she had been prevented from attending a meeting of the Wolverton Urban District Council for fear of the plaintiff spitting at her, as he had done so previously. A neighbour of the plaintiff had had to summon him and his wife in May, 1941, for assault. The plaintiff was fined and his wife bound over. The plaintiff's landlady had found him a bad tenant, owing to his quarrels with his wife, which caused annoyance to the neighbours. His Honour Judge Forbes observed that there was nothing unlawful in the defendants protecting their own interests. There was no evidence of their achieving their objects in an unlawful manner. Judgment was given for the defendants, with costs.

Decision under the Workmen's Compensation Acts.

Tuberculosis as an Accident.

In *Barnes* v. *The Royal Northern Hospital*, at Clerkenwell County Court, the applicant's case was that she entered the respondents' employment in April, 1939, as a nurse at the Royal Chest Hospital. She was then in perfect health, and X-ray photographs of her chest showed no trace of disease. In September, 1940, the Royal Chest Hospital was bombed, and the applicant's foot was injured. She was nursed at home, and returned to duty on the 1st January, 1941. Thereupon she was transferred for duty to the Clare Hall Hospital, South Mimms. On the 5th February, 1941, another nurse became ill with tuberculosis, and the whole staff were photographed by X-rays. The applicant was then found to be in an advanced stage of pulmonary tuberculosis. She was at once put to bed for treatment, and had ever since been totally incapacitated, i.e., by an accident arising out of and in the course of her employment. The latter proposition was denied by the respondents, who admitted, however, that none of the applicant's relations were similarly afflicted. Although she had contracted the disease at work, this did not constitute an accident within the Acts. Moreover, the respondents had had no notice of the accident, and the proceedings were not commenced within six months. His Honour Judge Earengey, K.C., found that in May, 1940, the applicant developed a persistent cough, and, while at home with her injured foot, she once saw blood in her sputum. The onset of the disease was therefore in May, 1940, although this was not known to anybody until February, 1941. A similar problem had arisen in *Dover Navigation Co., Ltd.* v. *Craig* [1940] A.C. 140, in which a seaman contracted yellow fever from mosquito bite in Senegal. The House of Lords held that the seaman was specially exposed to the risk of infection from disease-bearing bacteria in West African ports. His death was therefore an accident in respect of which the dependants were entitled to compensation. There was no distinction in principle between disease-bearing bacteria and the tubercular bacilli to which nurses were exposed. If the causal relation between the accident and the employment is established, the length of time to which the workman is exposed to the danger does not affect the principle. In *Fife Coal Co., Ltd.* v. *Young* [1940] A.C. 479, the workman developed "dropped foot" through paralysis caused by pressure on the peroneal nerve owing to working in a confined space. The employers' case was that this was no accident, but merely the gradual development of an unscheduled industrial disease, the injury was not due to an accident, but to the imperceptible progress of the disease, aggravated by work. The workman, however, was held entitled to compensation. The effect of these decisions was that, if an accident is proved, it is immaterial that the incapacity does not follow immediately. A question of fact may nevertheless arise, viz., after a long lapse of time, since the accident, are extraneous causes solely responsible for the incapacity? A cough, however, soon follows the onset of pulmonary tuberculosis, and the applicant's "accident" in May, 1940, was accompanied by the entry of bacilli, producing a pathological condition of the lung rendering it susceptible to attack by the entry of fresh bacilli. On a particular day the applicant's resistance was broken down, and a portion of her lung structure was at once damaged. She then suffered an accident out of and in the course of her employment, and it was immaterial that the injury did not manifest itself until February, 1941. As regards the alleged absence of notice, within six months, the respondents knew the applicant's condition before she did. The want of notice was no bar, if the employers had notice from any other source. In any case, the respondents were not prejudiced. As regards the failure to make the claim within six months, the time ran from the 5th February, 1941. For eight months, however, until September, 1941, the applicant was nursed at her place of employment, and was paid her salary. This would induce the belief that there was no need to take any step. In any case there was reasonable cause for not claiming within s. 14 (1) (*d*). An award was accordingly made for the agreed amount, viz., 22s. 6d. per week, plus 5s. supplementary allowance, or a total of £103 7s. 3d. to the date of the award. Costs were allowed on Scale B, with a fee to counsel for settling the particulars of claim, an increase in brief fee under Ord. 47, r. 21 (1), and an increase in the solicitor's fee for instructions for brief under Ord. 47, r. 21 (3), and a qualifying fee to each of two medical witnesses for the applicant.

New Year Legal Honours.

PRIVY COUNCILLOR.

Mr. RALPH ASSHETON, M.P., Parliamentary Secretary to Ministry of Supply, 1942–43. Called by Inner Temple, 1925.

KNIGHTS BACHELOR.

Mr. HAROLD JAMES COLLISTER, Puisne Judge, High Court, Allahabad.

Mr. MARSHALL MILLAR CRAIG, K.C., Legal Secretary and Chief Parliamentary Draftsman, Lord Advocate's Department.

Mr. CHARLES LEE DES FORGES, Town Clerk, Rotherham. Admitted 1902.

Capt. GEORGE SAMPSON ELLISTON, M.P. Called by Lincoln's Inn, 1901.

Mr. LEWIS EDWARD EMERSON, Commissioner for Justice and Attorney-General, Newfoundland.

Major GORONWY EVANS, M.P. Called by Gray's Inn, 1919.

Mr. JOHN MILNER GRAY, Chief Justice, Zanzibar. Called by Gray's Inn, 1932.

His Hon. Judge GERALD DE LA PRYME HARGREAVES, County Court Judge.

Mr. ARCHIBALD JOHN KING, Puisne Judge, High Court, Madras.

Mr. JAMES HARVEY MONROE, Puisne Judge, High Court, Lahore.

Mr. NAVROJI JAHANGIR WADIA, Puisne Judge, High Court, Bombay.

ORDER OF ST. MICHAEL AND ST. GEORGE.—C.M.G.

Mr. C. A. HOOPER, Procureur and Advocate General, Mauritius. Called by the Inner Temple, 1924.

Mr. R. M. MAKINS, attached to Staff of British Representative to French Committee of National Liberation, Algiers. Called by Inner Temple, 1927.

Mr. H. K. PAINE, Local Court Judge and Judge in Insolvency, South Australia.

ORDER OF THE BRITISH EMPIRE.—K.B.E.

Mr. WILLIAM ROBERT FRASER, Secretary, War Damage Commission.

Mr. CYRIL JOHN RADCLIFFE, K.C., Director-General, Ministry of Information. Called by Inner Temple, 1924.

ORDER OF THE BRITISH EMPIRE.—C.B.E.

Mr. W. H. BAINES, Town Clerk and A.R.P. Controller, Liverpool. Admitted 1926.

Mr. E. J. HAYWARD, Clerk to Justices, Cardiff, and President, Incorporated Justices' Clerks' Society.

Mr. H. S. KERSHAW, Chairman, North-West Regional Price Regulation Committee, Board of Trade. Admitted 1906.

Mr. A. C. L. MORRISON, Senior Chief Clerk, Metropolitan Police Courts.

Mr. A. C. WILSON, Assistant Solicitor, Department of H.M. Procurator-General and Treasury Solicitor.

ROYAL VICTORIAN ORDER.—K.C.V.O.

Sir ERNEST HENRY POOLEY. Called by Lincoln's Inn, 1901.

[Legal awards on the United Kingdom list of the O.B.E., and M.B.E. contained in the second section of the New Year's Honours will be published in next week's issue.]

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Income Tax—LOAN OUT OF CAPITAL TO MAKE UP INCOME.

Q. We have read with interest your answer to a question on income tax under "Points in Practice" in your issue of the 7th August, at p. 279. We have, in the past, in order to save the payment of income tax on payments out of capital, made the following provision, namely:—

"(1) If and whenever in any year during the widowhood of my wife the gross income arising from the trust fund shall amount to less than £ , then I declare that my trustees may at their discretion make out of the capital of the trust fund a loan to my wife without interest or security of such a sum as shall amount with the income of the trust fund for that year to £ or such lesser sum as they decide.

(2) My trustees shall have full power in their absolute discretion to allow any loans to my wife to remain unpaid for as long as they think fit and at her death or sooner if they think fit to forgive my wife or her estate any debts owing to them by her and no beneficiary under my will shall have any right to object or make any claim against my trustees because of an exercise of this power."

Would these loans be liable to income tax?

A. From the question it is assumed that there is here no bequest of an annuity, but a life interest in the income of capital funds, and that the amount of income would naturally diminish if the rate of interest on the investments for the time being went down. The opinion is given that in such a case there would be no liability to additional income tax, any more than there would be if the trustees had been given power to make advances of capital. Where the payments directed are annuities, it seems that tax cannot be avoided by borrowing capital to make up deficiency of income. See *Peirse-Duncombe Trust Trustees* v. *I.R.C.* (1940), 84 SOL. J. 551.

Motorist's Insurance.

Q. I have read *Richards* v. *Cox* (1943), 87 SOL. J. 92. A client of mine had a wife who was a passenger in a vehicle involved in an accident as a result of which she died. The vehicle was a lorry belonging to a company and was insured by an insurance company against third party risks while in use for the company's business or for private, social and domestic purposes. The insurance covered passengers, but stipulated that the lorry was driven by the insured or someone in their employ, or by their permission. In fact the lorry was being driven by the company's maintenance engineer, but it seems at least doubtful if he was employed on the company's business, as he was in fact taking our client's wife and several other people home from a wedding reception. The petrol he was using had been obtained on a Home Guard coupon, and he stated at the inquest that he was using the lorry for Home Guard purposes on a reconnaissance of a certain area he had been ordered to make. The claim would include an item for loss of expectation of life, and the claim would therefore have to be brought in the High Court. Our client is a man of no substance, earning about £3 per week. We feel very diffident on advising him as to his claim in the circumstances, and as to whether he should accept an offer from the insurers or the owners of the lorry or driver, and have advised that counsel's opinion be taken. Am I right in thinking that if such opinion was taken and acted on this would absolve us from any claim for negligence? I cannot find any authority on this point, but have always understood this to be the case. *Richards* v. *Cox* however makes one rather nervous.

A. The querist is correct in considering that the taking of counsel's opinion would absolve his firm from a claim for negligence. The case quoted does not cast doubt on the established principle that such a course protects the solicitor.

Growing Timber.

Q. Has the Ministry of Supply the right to requisition growing timber? If so, is the compensation payable limited to the value of the timber, or may compensation be claimed under s. 3, Compensation (Defence) Act, 1939, for the diminution in the annual value of the land for which a yearly rent in respect of sporting rights has hitherto been paid? Can any claim also be made to have the land replanted at the expense of the requisitioning authority?

A. The above may be requisitioned by the Ministry. The loss of sporting rights and also the cost of replanting are too remote to form the subject of a claim for compensation. The latter will be limited to the value of the timber.

Abandonment of Premises.

Q. In your issue of the 14th August, at p. 289, under the above heading, you refer to a case of *Wood* v. *Boot* heard at the Birmingham County Court, which was a claim for possession of certain premises at Aston and for arrears of rent. It is stated that an alternative procedure to that in *Wood* v. *Boot* is to apply to the magistrates for an order for possession under the Distress for Rent Act, 1737, as amended by the Deserted Tenements Act, 1817. Some months ago when I desired to obtain possession of some deserted premises on behalf of a client I thought to make use of this procedure, but came to the conclusion I could not do so because of the Courts (Emergency Powers) Act, 1939. It is exercising a remedy within the meaning of s. 1 of the 1939 Act, and therefore the consent of the appropriate court has to be obtained. The appropriate court constituted by the rules made under the Act is either the High Court or the county court; not a court of summary jurisdiction. The new rules dated the 30th July made under the Courts (Emergency Powers) Act, 1943, do not seem to alter the position in this respect, for by r. 5 it is provided that the appropriate court for the giving of leave to exercise the remedy for entering into possession of land or for re-entry upon land where neither the value of the land nor the rent payable exceeds £100 a year, shall be the county court as an alternative to the High Court. Courts of summary jurisdiction are referred to in r. 39—for the first time I believe in any rules made under the Courts (Emergency Powers) Acts—but having regard to r. 5, the position in regard to the appropriate court with reference to the exercise for the remedy of re-entry upon land has not been altered.

A. The basis of the landlord's claim is the implied surrender by the tenant. There is no exercise of a right of re-entry, as this does not exist in the absence of a proviso in a lease. The landlord is not exercising a remedy within s. 1 of the 1939 Act, as he is not evicting the ex-tenant. The latter has already evicted himself. See the judgment of Lord Greene, M.R., in *Butcher* v. *Poole Corporation* [1943] 1 K.B., p. 54, lines 17 to 21 and lines 5 to 7. The conclusion is that the leave of the court is unnecessary.

Notes of Cases.

HOUSE OF LORDS.

Jones *v.* Amalgamated Anthracite Collieries, Ltd.

Viscount Simon, L.C., Lord Thankerton, Lord Russell of Killowen, Lord Macmillan and Lord Wright. 7th December, 1943.

Master and servant—Workmen's compensation—Partial incapacity—"Earning or . . . able to earn in some suitable employment"—Pay and allowances as conscripted soldier—Workmen's Compensation Act, 1925 (15 & 16 *Geo.* 5, *c.* 84), *s.* 9 (3) (i).

Appeal from a decision of the Court of Appeal (MacKinnon, Goddard and du Parcq, L.JJ. (86 SOL. J. 392), reversing the decision of the learned county court judge sitting as arbitrator at Ammanford.

The appellant was a collier employed by the respondents. In June, 1932, he met with a serious accident in the mine. His average pre-accident earnings were £2 10s. 8d. He was paid for total incapacity until 1935. He then started work above ground at the screens and received compensation for partial incapacity until November, 1935. Compensation then ceased as, owing to increase in wage rates, his wages exceeded his pre-accident earnings. On 30th September, 1940, he was earning £3 15s. 4d. at the screens. He was then compulsorily called up for service in the Army. His pay, rations and other advantages were agreed to amount to £2 0s. 9d. He claimed from the respondents, as his previous employers, half the difference between this sum and his pre-accident earnings. The learned county court judge held the appellant was still partially incapacitated, as he was not physically fit for his pre-accident work as a collier. He further found that the cause of his inability to earn £3 15s. 4d. was due, not to any physical incapacity, but solely to his conscription. He held the case fell within s. 9 of the Workmen's Compensation Act, 1925, and he made an award in favour of the appellant of half the difference between £2 10s. 8d. and £2 0s. 9d. The Court of Appeal reversed the decision of the county court judge. The Workmen's Compensation Act, 1925, s. 9 (3) (i) provides: "The rules for calculating the weekly payment in case of partial incapacity shall be . . . one-half of the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning, or is able to earn, in some suitable employment or business after the accident."

VISCOUNT SIMON, L.C., said that the appellant attempted to argue that conscription would probably not have applied to him if he had not been injured in 1932, but this was a speculation into which it was impossible to enter with confidence. They must take it that the application of conscription was a supervening event which further limited his income, but which was not proved causally to be connected with the original accident. The question, therefore, was whether a supervening event of the kind operated to increase the respondents' liability to the appellant. It was not disputed that, if a partially incapacitated workman met with a second accident, with which the employers had nothing to do, and thereby was further reduced in earning capacity, this supervening event did not increase the liability of the employers. The same principle applied here. Compensation under s. 9 was compensation when total or partial incapacity "resulted from the injury." Assuming that a soldier's pay was for some purposes earnings (*Owners of s.s. Raphael* v. *Brandy* [1911] A.C. 413), a reduction in an injured workman's earnings owing to conscription could not be laid to the charge of his former employer, for it was unconnected with the injury for which the employer was responsible. He (his lordship) agreed with du Parcq, L.J.'s observation that the words "which he is earning" in s. 9 (3) (i) of the Act referred only to earnings which were, at least in some degree, affected by the workman's incapacity. "It follows," said the lord justice, "that, as a general rule, a man whose earnings are reduced because he has been called up for service in His Majesty's army cannot properly claim that his soldier's pay and allowances shall be treated as his earnings for the purposes of the subsection. They represent a figure which is wholly irrelevant to the calculation thereby prescribed. The reduction in his income is due, not to his incapacity, but to the fact that the legislature has made him (in common with other young men) liable for military duty." The appeal should be dismissed.

LORD THANKERTON, LORD RUSSELL OF KILLOWEN and LORD MACMILLAN delivered opinions concurring in dismissing the appeal.

LORD WRIGHT delivered a dissenting opinion.

COUNSEL: *Gilbert Paull*, K.C., and *Gerwyn Thomas*; *F. A. Sellers*, K.C., and *Carey Evans*.

SOLICITORS: *J. T. Lewis & Woods*, for *Randell, Saunders & Randell*, Swansea; *Botterell & Roche*, for *Llewellyn & Hann*, Cardiff.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Assessment Committee for City of Westminster *v.* Conservative Club.

Viscount Simon, L.C., Lord Thankerton, Lord Russell of Killowen, Lord Macmillan, and Lord Wright. 15th December, 1943.

Rating—Reduction in value attributable to the present emergency—"Classes" of hereditaments—"Hereditaments of a comparable character"—Rating and Valuation (Postponement of Valuations) Act, 1940 (3 & 4 *Geo.* 6, *c.* 12), s. 1 (2) (*b*).

Appeal from a decision of the Court of Appeal (Lord Greene, M.R., Scott and MacKinnon, L.JJ.) affirming the decision of the King's Bench Division (Lord Caldecote, L.C.J., Humphreys and Asquith, J.J.) in favour of the respondents, upon a case stated by the County of London Quarter Sessions.

Under the Valuation (Metropolis) Act, 1869, a fresh quinquennial valuation for London was due in 1941. The Rating and Valuation (Postponement of Valuations) Act, 1940, prolonged the operative quinquennial lists until, in effect, the second year after the termination of the present emergency. Section 1 (2) provides: "While the said valuation lists remain in force, any increase or reduction in value attributable directly or indirectly to the present emergency, to the extent that the increase or reduction—(*a*) is peculiar to a particular hereditament; or (*b*) affects a particular hereditament and also other hereditaments of a comparable character in the rating area in question but does not represent a general alteration in the value of all classes, or substantially all classes, of hereditaments in that area, shall, in relation to that hereditament, be deemed to be an alteration in the matters stated in the valuation list within the meaning of paragraph (1) of s. 46 of the said Act . . . and to be such an increase or reduction in value as is referred to in s. 47 of the said Act." The respondents, a club occupying premises in St. James's Street, appealed to quarter sessions for the County of London against a decision of the Westminster Assessment Committee fixing the assessment of the club at £6,800 gross value, with corresponding rateable value, in place of £8,500 in the quinquennial valuation list, contending that the assessment should be reduced to £5,000. It was not disputed that the annual value of the club was reduced from £8,500 to £5,000 gross value by reason of circumstances arising out of the present emeregency, including the lighting restrictions, but the appellants contended that only part of this fall in value, viz., from £8,500 to £6,500 was due to special depreciation justifying the lowering of the assessment, and that the remaining reduction in value, caused to this and other clubs of a comparable character in Westminster by the influence of the emergency, merely reflected "a general alteration in the values of all classes, or substantially all classes, of hereditaments in that area." On behalf of the club F was called as a witness and his evidence was accepted by quarter sessions. F stated that the majority of hereditaments in Westminster were reduced in value, but in varying degrees, by reason of circumstances arising out of the present emergency. Some, however, had not been affected, some had been actually increased in value. He further stated that there was no general reduction in value of all, or substantially all, hereditaments, or classes of hereditaments, in Westminster. Quarter sessions reduced the assessment to £5,000, and their decision was affirmed by the Court of Appeal. The assessment committee appealed.

VISCOUNT SIMON, L.C., said that it was a mistake to suppose that hereditaments could be divided up with scientific precision into a defined number of classes, as though there were a fixed number of species included within the genus. The meaning of "classes" in s. 1 (2) (*b*) was to be gathered from the opening words, which associated with a particular hereditament "other hereditaments of a comparable character." All that was meant by a "class of hereditaments" was a list or group of premises which, for the purposes of rating valuation, might be regarded as possessing comparable features. Quarter sessions had found as a fact that the reduction in value, which affected the club, was not a reduction which was generally applicable to all hereditaments, or substantially all hereditaments, in the City of Westminster. There was evidence before the court which could support that conclusion and there was no sufficient ground for holding that, in reaching it, the court misdirected itself as to the meaning and application of the section. The appeal, therefore, failed.

The other noble and learned lords agreed in dismissing the appeal.

COUNSEL: *Montgomery*, K.C., and *Squibb*; *Comyns Carr*, K.C., and *Grant*, K.C.

SOLICITORS: *Allen & Son*; *Richardson, Sadler & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Reid *v.* Coggans (or Reid).

Viscount Simon, L.C., Lord Thankerton, Lord Russell of Killowen, Lord Macmillan and Lord Wright. 21st December, 1943.

Annuity—Covenant by father to pay annuity to son during father's life—Son predeceases father—Right of son's executor to payment of annuity.

Appeal from a decision of the majority of the Court of Session, reversing a decision of the Lord Ordinary (Lord Robertson).

By a bond, dated the 24th February, 1933, W.R. granted a bond of annuity in favour of his son R.R., in the following terms: "I W.R. . . . for the love and affection which I have and bear for my son R.R. . . . do hereby bind myself to pay to the said R.R. during my life an annuity of £480 and that yearly on the 1st March in each year beginning the first payment thereof on the 1st March 1933 for the year preceding and so forth during my lifetime . . ." The annuity was duly paid until the death of the son on the 5th November, 1940. The son's widow, his executrix-dative, the respondent to the appeal, in these proceedings, claimed that the annuity did not terminate on the death of the son but the right to receive it was transmitted to his estate during the life of the appellant. The Lord Ordinary held that the claim of the widow failed. His decision was reversed by a majority of the Court of Session.

VISCOUNT SIMON, L.C., said that an "annuity" meant an annual sum and the period for which that sum had to be paid must be gathered, in the light of the relevant facts, from the language of the instrument conferring it. Where no period was fixed in the instrument itself during which the annual sum had to be paid, the court would, without question, hold that the period of such payment was limited to the lifetime of the annuitant in all cases where the only alternative was a payment in perpetuity, and for this very good reason: If the payment had to be made in perpetuity, the distribution of the estate of the testator, or of the estate of the covenantor after his death, would be held up for an indefinite time unless the court was in a position to authorise the executors to retain a sum to secure the annuity and distribute the rest (*Harbin* v. *Masterman* [1896] 1 Ch. 351). Even so, the sum retained would have to be held by the legal personal representatives or by the court in perpetuity. No court would willingly attribute to a testator or covenantor the intention of bringing about such a state of things. These were the considerations which explained the observation of Lord

Hardwicke in *Savory* v. *Dyer* (1752), Amb. 139, that: "If one gives by will an annuity . . . to A, A shall have it only for life; if A might give it to his executors, it might go from executors to executors for ever." Where no time for the duration of the annual payments was fixed by the instrument treating the annuity, the time was to be presumed to be the life of the annuitant. But where the instrument itself fixed a time, as it did in this case, there was no room for the application of this *prima facie* rule of construction. The plain words of the instrument must prevail and no implication to the contrary arose. The appeal must be dismissed.

The other noble and learned lords agreed.

COUNSEL: *The Solicitor-General for Scotland* (Sir David Murray, K.C.) and *Robert MacInnes, Charles Mackintosh*, K.C., and *H. W. Guthrie*.

SOLICITORS: *Abbott, Anderson, Braithwaite & Whittaker*, for *Simpson and Marwick*, W.S., Edinburgh, and *J. & J. Gartshore Scott*, Glasgow; *Druces and Attlee*, for *Macpherson & Mackay, W.S.*, Edinburgh, and *John W. and G. Lockhart*, Ayr.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF APPEAL.

In re **Schebsman**; *Ex parte* **the Official Receiver** *v.* **Cargo Superintendents (London) Ltd.**

Lord Greene, M.R., Luxmoore and du Parcq, L.JJ. 6th December, 1943.

Bankruptcy——Agreement to pay sums to employee's widow and daughter on his death—Bankruptcy and death of employee—Equitable right of trustee in bankruptcy—Payment to third parties—Whether an advancement.

Appeal from a decision of Uthwatt, J. (*ante*, p. 282).

S was for many years employed by a Swiss company or by its English subsidiary in England. His employment was terminated on the 31st March, 1940. By an agreement dated the 20th September, 1940, made between S and the Swiss and English companies, after reciting it was agreed that compensation should be paid to S for his loss of employment, it was provided that the English company should pay to S £2,000 immediately and a sum of £5,500 by six annual instalments. It was further agreed that if S should die before 1946, certain annual sums, amounting in all to £3,500, should be paid to his widow until 1950, and, if she should die before that date, the payments were to be made to his daughter. S was adjudicated bankrupt on the 5th March, 1942, and died on the 12th May, 1942. By this motion his trustees in bankruptcy claimed that all sums payable under the agreement formed part of the estate of the bankrupt. The widow and daughter of S and the English company were respondents to the motion. The English company was desirous of continuing the payments to the widow and daughter. Uthwatt, J., held that the motion failed, the trustee had no right to require payment of these sums to himself. The trustee appealed.

LORD GREENE, M.R., said that he could find in the contract nothing to justify the conclusion that a trust was intended. The trustee in bankruptcy had abandoned his contention that he could recover the payments to the widow as money had and received to his use. His argument rested on the following equitable principles: S had provided the whole of the consideration for the company's undertaking to make the payments to his widow and daughter. They accordingly must be regarded as voluntary gifts. The transfer, however, was not completed, as the wife and daughter had no title to demand payment themselves. It was therefore possible for the debtor at any time to intervene and to assert that any payments thereafter made should be held by his wife on behalf of his estate. If the company in these circumstances made the payments there would be a resulting trust for the debtor. It was further alleged that in proper proceedings the company could be compelled to make the payments direct to the debtor, the case being analogous to an uncompleted gift or an imperfectly constituted trust. The wife and daughter were mere volunteers and equity would not assist them. This argument was fallacious. The debtor had no right to intervene and direct the payments to anyone but the wife and daughter. The company was entitled to ignore such a direction. The position between the debtor and his wife and daughter had to be considered. The cases of uncompleted gifts or imperfectly constituted trusts were misleading. Not only was the money in question never the debtor's property but, having made the contract, he had set in motion a piece of machinery which he had no power to stop by his own unaided action, save by releasing the company from its contract. This was not a revocable mandate. The fact that the debtor could release the company was no argument for saying that he could claim the moneys as his own. The question therefore was whether equity would help the trustee to recover the money from the widow. He (the learned judge) could find no principle which called for an affirmative answer. The debtor provided the consideration for the payments, with the intention that the payments should belong to the recipients beneficially, and in this sense the provision might be regarded as an advancement. The advancement was completed when the contract was made. There was no reason in principle why an advancement should not be regarded as complete, when the person desiring to make it had set in train a process for that purpose which it was out of his power to control by his own activities. The distinction between the cases in which insurance policies were taken out in favour of third persons and the present class of case was pointed out by Simonds, J., *In re Stapleton-Bretherton* [1941] Ch. 462. He agreed with Uthwatt, J., that the argument based on s. 42 of the Bankruptcy Act, 1914, also failed. The appeal must be dismissed.

LUXMOORE and DU PARCQ, L.JJ., agreed in dismissing the appeal.

COUNSEL: *Roxburgh*, K.C., and *Pennyquick*; *Raeburn*; *A. T. Denning*, K.C., and *C. R. F. Morris*.

SOLICITORS: *Tarry, Sherlock & King*; *Morris Ward-Jones, Kennett & Co., Albert M. Oppenheimer*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION.

In re **Buckingham**; **Oswell** *v.* **John Dobell, Ltd.**

Simonds, J. 9th December, 1943.

Will—Construction—Specific shares given to legatee for life followed by a provision that the shares "to remain the property of the company"—Whether a bequest of its shares to the company—Validity of bequest.

Adjourned summons.

The testatrix by her will, dated the 22nd October, 1942, gave a number of bequests, including a bequest in the following terms: "I bequeath my shares in the company of J.D., Ltd. to the said G.M.O., to receive the income derived therefrom during her lifetime—the shares to remain the property of J.D., Ltd." The will contained no residuary gift. The testatrix died on the 18th December, 1942. She held at her death sixty preference shares of £10 each in J.D., Ltd. This summons was taken out by the trustees of the will asking whether the sixty preference shares in J.D., Ltd. would, on the death of the tenant for life, go and belong to J.D., Ltd., or whether the shares were undisposed of.

SIMONDS, J., said that there were two questions: First, whether upon the true construction of this will there was a gift of the reversionary interest in the shares to the company; secondly, if there was such a gift, whether it was a valid gift having regard to the rule of law that a company cannot be a member of itself. He found it unnecessary to consider the second, and, as he thought, very difficult question. He found it impossible to say that by the words "the shares to remain the property of J.D., Ltd." there was sufficient indication of an intention to make a gift of the shares. They were not words apt to create a gift. If the words had been adequate to create a gift of a reversionary interest, he would have had to consider the second question. He thought that, notwithstanding the dictum of Lord Hatherly in *Cree* v. *Somervail*, 4 A.C. 648, at p. 661, that a testator might make a bequest of a company's shares to the company, which was approved, or at any rate not disapproved, by Romer, L.J. (as he then was), in *Kirby* v. *Wilkins* [1929] 2 Ch. 444, at p. 450, the question was one which still deserved the consideration of the court.

COUNSEL: *J. V. Nesbitt*; *Wilfrid Hunt*; *Waite*.

SOLICITORS: *Barlow, Lyde & Gilbert*, for *Ivens, Thompson & Green*, Cheltenham; *Maples, Teesdale & Co.*; *Field, Roscoe & Co.*, for *Griffiths and Sons*, Cheltenham.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Jackson**; **Holliday** *v.* **Jackson.**

Uthwatt, J. 10th December, 1943.

Will—Construction—Will made before 1926—*Bequest "to next of kin" at death of tenant for life—No reference to Statutes of Distributions—Class of next of kin to take—Administration of Estates Act*, 1925 (15 *Geo.* 5, *c.* 23), *s.* 50 (2).

Adjourned summons.

The Administration of Estates Act, 1925, s. 50 (2), provides: "Trusts declared . . . in a will coming into operation, before the commencement of this Act, by reference to the Statutes of Distribution, shall, unless the contrary thereby appears, be construed as referring to the enactments . . . relating to the distribution of effects of intestates which were in force immediately before the commencement of this Act." The testatrix, by her will dated the 3rd August, 1901, gave all her residuary estate to her trustees upon trust to pay the income thereof to J for his life, and then to divide the estate between his issue, and if there should be no such issue she directed her trustees "to divide my residuary estate among such persons as at that date would be my next of kin had I died unmarried and intestate." The testatrix died on the 5th June, 1910, and J died without issue on 31st January, 1941. By this summons the trustees of the will asked whether the persons to take the residue were the next of kin of the testatrix ascertained under the Statute of Distributions of 22 and 23 Charles II, c. 10, or her next of kin ascertained under the Administration of Estates Act, 1925.

UTHWATT, J., said that there was only one point which was not covered by authority. There had been no case in which the trust had been for "such persons as at that date would be my next of kin." The question was whether by that phrase trusts were declared by reference to the Statutes of Distributions within s. 50 (2) of the Act of 1925. The only purpose of the trust was to ascertain the next of kin. The testatrix by mentioning next of kin was necessarily referring to her next of kin ascertained according to the Statutes of Distribution. The phrase was one step in declaring trusts by reference to the Statutes of Distributions. The trusts were accordingly within s. 50 (2) and the persons entitled were the next of kin entitled under 22 and 23 Charles II, c. 10.

COUNSEL: *Norwood*; *Russo*; *Pascoe Haywood*.

SOLICITORS: *Beachcroft & Co.*, for *Little & Co.*, Penrith.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Homelands (Handforth), Ltd. *v.* **Margerison (Inspector of Taxes)**

Macnaghten, J. 20th October, 1943.

Revenue—Income tax—Money paid by company in pursuance of guarantee of loan—Whether money paid deductible by company for purposes of assessment to tax as a disbursement or expense wholly and exclusively laid out or expended for the purposes of the company's trade—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. D—Rules applicable to Cases I and II*, *r.* 3 (*a*).

Case stated by the Commissioners for the General Purposes of the Income Tax Acts for the Stockport Division of Cheshire.

This was an appeal by the H Co. from the decision of the General Commissioners that the company was not entitled to deduct the sum of £3,105 19s. 1d. in arriving at its profits for the purpose of assessment under Sched. D, as that sum was not a disbursement or expense wholly and exclusively laid out or expended for the purposes of the company's trade within the meaning of r. 3 (*a*) of the Rules applicable to Cases I and II of Sched. D. The company had had to pay the sum in question to a firm of solicitors in accordance with a guarantee the company had given guaranteeing the repayment of the loan of that sum by the solicitors to a firm of builders called T Brothers. The company had entered into a covenant with T Brothers to convey plots of land owned by the company to purchasers of houses built by T Brothers, the company reserving to themselves a rent of £5 a year in respect of each plot, and the guarantee had been given by the company to assist T Brothers, it being of advantage to the company that such assistance should be given.

MACNAGHTEN, J., said that the payment by the company of the £3,105 19s. 1d. to the firm of solicitors in accordance with the guarantee given by the company to that firm was not a disbursement or expense wholly and exclusively laid out or expended for the purpose of the company's trade within the meaning of r. 3 (*a*); therefore, the appeal from the decision of the General Commissioners would be dismissed.

COUNSEL: *N. E. Mustoe; The Solicitor-General* (Sir Donald Maxwell Fyfe, K.C.) and *R. P. Hills.*

SOLICITORS: *Peacock & Goddard*, for *Barlow, Parkin & Co.*, Stockport; *Solicitor of Inland Revenue.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Jesson *v.* Jesson.

The President. 1st December, 1943.

Husband and wife—Divorce for insanity—Maintenance—Agreement under seal between petitioner and local authority—Undesirability of procedure—Better course to leave matter to court.

Husband's petition for divorce on the ground of insanity as provided in s. 176 of the Supreme Court of Judicature (Consolidation) Act, 1925, as amended by the Matrimonial Causes Act, 1937, s. 2.

The PRESIDENT said that he had already pronounced a decree *nisi* and dealt with costs, but the question of maintenance was one on which he ought to say a word. When divorce for insanity was introduced by the Matrimonial Causes Act, 1937, specific provision was made in s. 10 (2) to entitle the respondent to any such suit to claim alimony *pendente lite*, or maintenance, as the case might be, on the same basis as would a petitioner in a suit of the more normal kind, and the rules, particularly r. 42, were adapted to meet the point. In the cases in which the Official Solicitor acted as guardian *ad litem*—and they were the very great majority of such cases—he made it his first business to take up on behalf of the respondent the question of maintenance, went into the respondent's means, and got into correspondence with the local authority who were actually concerned with the mental hospital where the respondent was detained. The matter was then brought before the court with full information, and in the ordinary case the agreed order for maintenance was embodied in the decree *nisi*. The point was not affected one way or the other by the question whether the agreement was made, so that it could be embodied in the decree *nisi* or whether it was dealt with as a separate matter. The point of real importance was whether the court had in these matters power to make orders, and from time to time to vary them, according to the circumstances of the moment. In this particular case correspondence of the kind indicated commenced on 9th June, 1943. For some time past the husband had been paying 5s. a week, but in May, 1943, he agreed with the Corporation to pay an extra 2s. 6d., so that his liability for the moment was 7s. 6d. The Blackpool Corporation in a letter of 11th June to the Official Solicitor said that they would agree to the continuance of the payment of 7s. 6d. a week, and that the town clerk had communicated with the husband's solicitor with a view to entering into an agreement for payment at that rate. It was clear that the Official Solicitor thought that the town clerk was referring only to an agreement in the sense that the husband would agree to pay 7s. 6d., but not in the sense that a formal document under seal was being entered into, and it was equally clear that the Corporation were thinking of a document under seal and so was the husband's solicitor, who assented to the whole proceedings. There was not the slightest suggestion of bad faith on the part of the Blackpool Corporation or of anyone concerned, or of any attempt to oust the jurisdiction of the court. But, in fact, that was what happened to some extent, and his lordship was bound to say that it was undesirable that agreements of that kind should be entered into when the suit was pending before the court. What in fact happened was that a document under seal dated 12th August, 1943, was made whereby the husband covenanted with the Corporation to pay 7s. 6d. during the joint lives of himself and his wife. That raised a difficulty. Any order for maintenance made by the court would be varied, and of course the court would not be bound by the fact that the Corporation had agreed to accept 7s. 6d. if the man's circumstances became such that it was obviously to the benefit of the respondent, and the Official Solicitor, as guardian *ad litem*, brought the matter forward in that sense, that some much larger order should be made in her favour. But, equally, the circumstances might change the other way, and the man might not be able to afford to pay 7s. 6d. a week. In those circumstances the court had no power that his lordship was aware of to set aside the deed, and the result was, that if it became a practice to get petitioners in that class of case to enter into deeds of that sort, the petitioner would always be put in the most unfavourable possible position. These matters should, as Parliament clearly intended they should, be left to be dealt with by the court with full knowledge of all the circumstances, and with the assistance of the guardian *ad litem*, who in 99 per cent. of the cases was in fact the Official Solicitor. Question of maintenance adjourned.

COUNSEL: *Ifor Lloyd; E. Holroyd Pearce.*

SOLICITORS: *Gregory, Rowcliffe & Co.*, for *Ascroft, Whiteside & Co.*, Blackpool; *The Official Solicitor.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Notes and News.

Honours and Appointments.

The Lord Chancellor has made the following appointments as from the 1st January, 1944:—

Mr. J. D. METTERS, Joint Registrar of the Cambridge, Newmarket, Ely, Royston, Bishop's Stortford, Saffron Walden, King's Lynn, Downham Market, Swaffham, Wisbech and March County Courts and Joint District Registrar in the District Registries of the High Court of Justice in Cambridge and King's Lynn, is transferred to be Registrar of the Leicester, Ashby de la Zouch and Loughborough County Courts and District Registrar in the District Registry of the High Court of Justice in Leicester.

Mr. S. T. HADDELSEY is appointed Registrar of the Lincoln and Horncastle, Gainsborough, Newark, Market Rasen and Caistor County Courts, and District Registrar of the High Court of Justice in Lincoln.

The following appointments have been made in the colonial legal service:—

Mr. R. D. R. HILL, Resident Magistrate, Jamaica, to be Chief Magistrate, Palestine; Mr. M. C. N. DE LESTANG, Legal Adviser and Crown Prosecutor, Seychelles, to be Resident Magistrate, Kenya; Mr. T. H. MAYERS, Solicitor-General, Jamaica, to be Attorney-General, Jamaica; and Mr. C. D. NEWBOLD, Legal Draughtsman, Jamaica, to be Solicitor-General, Jamaica.

Mr. JOHN PASCOE ELSDEN has been appointed Recorder of Birkenhead in succession to Mr. Francis Bertram Reece, who has been appointed a Metropolitan magistrate. Mr. Elsden was called by the Inner Temple in 1909.

Notes.

The address of the Midland Regional Office of the War Damage Commission is now Block 8, Viceroy Close, Bristol Road, Birmingham, 5.

Prisoners of War.—Facilities are available for the regular despatch of THE SOLICITORS' JOURNAL to prisoners of war in Germany. Full particulars can be obtained from the Publishers, THE SOLICITORS' JOURNAL, 29/31, Breams Buildings, London, E.C.4.

According to a statement in *The Times*, owners of requisitioned property who are unable to reoccupy their premises because of delay in effecting repairs after release from requisitioning are to receive a lump sum equivalent to the compensation rent for the period during which the work is being carried out. This important concession is announced by the Treasury in a letter to the National Federation of Property Owners. While it is not always possible, says the Treasury, to determine in advance the date of releasing premises, as long notice as possible will be given to owners by the departments concerned. Compensation rent, the Treasury points out is governed by the Compensation (Defence) Act, 1939, as that which would have been obtainable from a tenant at the time of requisitioning, and cannot be increased afterwards. Owners have no right under the Act to require the requisitioning authority to carry out repairs or to delay release from requisitioning until damage has been made good. But, in cases where it is not possible for the owner to reoccupy while work is in progress, departments are paying a lump sum during the period required to carry out the work—not exceeding three months in normal cases and six months in special cases.

Following discussion with the British Employers' Confederation and the Trades Union Congress, the Board of Inland Revenue have agreed to the adoption by employers of a modification of the procedure for deducting income tax under "pay as you earn." This modification was suggested by Mr. J. Clayton, A.C.A., a member of the Committee of the Confederation, and was submitted by the Confederation to the Board with the object of reducing the work to be done by employers immediately preceding pay-day. If an employer wishes to adopt the modified procedure in place of the normal procedure he must obtain the authority of the local inspector of taxes. Under the modified procedure the simplified tax tables, which are non-cumulative, are used each week. After the end of every third week the tax deducted is brought into line with the full cumulative tables, any necessary adjustment being made when paying the fourth week's wages. The calculation work to make this periodical adjustment can be done outside the time of pressure. If preferred, the adjustment can be made after every week or every second week instead of after every third week. Employers must be able to satisfy the inspector as to the general agreement of the employees concerned. Any employer who wants further information about the modified procedure should apply to the local tax office.

Wills and Bequests.

Mr. Albert Francis Drew, J.P., retired solicitor, of Farnham Royal, Bucks, left £37,800, with net personalty £34,572.

Mr A. H. Redfearn, solicitor, of Heckmondwike, left £49,087, with net personalty £46,690.

Colonel Harold Hartley Wilberforce, D.S.O., solicitor, of Fulwood, Yorks, left £21,669, with net personalty £2,580.

Sir Raymond Woods, Kensington, solicitor to the Post Office, left £77,045.